

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BRIAN LUMBUS, JR.,

*Plaintiff,*

v.

STEVE WEISBAR, *et al.*,

*Defendant.*

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Case No. 1:23-cv-00196-JPH-SKB

Judge Jeffery P. Hopkins

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ORDER ADOPTING REPORT AND RECOMMENDATION

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This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Stephanie K. Bowman on April 24, 2024. Doc. 23. The Magistrate Judge made the ensuing recommendations:

- (1) The following claims set forth in Plaintiff's Complaint (Doc. 1) should be allowed to **PROCEED**:
  - a. First Amendment retaliation and harassment claims against defendants Weishar, Tabor, and Ritz in their individual capacities;
  - b. Eighth Amendment failure to protect claims against defendants Waggoneer, Tabor and Weishar in their individual capacities; and
  - c. civil conspiracy against Tabor, Weishar and Ritz.
- (2) All remaining claims against all defendants in their individual and official capacities should be **DISMISSED** for failure to state a claim.
- (3) An appeal of an Order adopting the Report and Recommendations would not be taken in good faith, and accordingly, leave for Plaintiff to appeal *in forma pauperis* should be **DENIED** pursuant to 28 U.S.C. § 1915(a)(3).

See Doc. 23, PageID 609.

The Court has reviewed the Report and Recommendation. Noting that no objections have been filed and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, the Court hereby **ADOPTS** the Report and Recommendation in its entirety.

Accordingly, the Court:

(1) **ALLOWS** the following claims set forth in Plaintiff's Complaint (Doc. 1) to **PROCEED**:

- a. First Amendment retaliation and harassment claims against defendants Weishar, Tabor, and Ritz in their individual capacities;
- b. Eighth Amendment failure to protect claims against defendants Waggoneer, Tabor and Weishar in their individual capacities; and
- c. civil conspiracy against Tabor, Weishar and Ritz.

(2) **DISMISSES** all remaining claims against all defendants in their individual and official capacities for failure to state a claim.

(3) **FINDS** that any appeal taken by Plaintiff of this Order adopting the Report and Recommendation (Doc. 23) would not be taken in good faith.<sup>1</sup>

Further, pursuant to Fed. R. App. P. 24(a)(4), within thirty (30) days after service of this Order, Plaintiff may file a motion with the Sixth Circuit Court of Appeals for leave to proceed in forma pauperis on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). If Plaintiff elects to do so, the motion must include a copy of the affidavit filed in the District Court and the District Court's statement of the reasons for denying pauper status on appeal. *Id.*; *see* Fed. R. App. P. 24(a)(5).

Finally, if Plaintiff fails either to (1) file a motion within thirty (30) days of receiving notice of this decision as required by Fed. R. App. P. 24(a)(5), or (2) to pay the required filing fee of \$505.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. If the appeal is dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently


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<sup>1</sup> The Court notes that Plaintiff appears to have paid a filing fee in the amount of \$402.00. *See* Docket Entry, 09/01/2022.

tendered, unless Plaintiff can demonstrate that he did not receive notice of the District Court's decision within the time period prescribed for under Fed. R. App. P. 24(a)(5). *Id.*

**IT IS SO ORDERED.**

Dated: July 1, 2025

  
Hon. Jeffrey P. Hopkins  
United States District Judge